

FCC MAIL SECTION

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Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)

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Revision of Part 22 and Part 90
of the Commission's Rules to Facilitate
Future Development of Paging Systems)

WT Docket No. 96-18

Implementation of Section 309(j)
of the Communications Act --
Competitive Bidding)

PP Docket No. 93-253

ORDER ON RECONSIDERATION OF FIRST REPORT AND ORDER

Adopted: June 10, 1996

Released: June 11, 1996

By the Commission:

1. Introduction. In the *Notice of Proposed Rulemaking (Notice)* adopted on February 8, 1996,¹ the Commission suspended acceptance of new paging applications governed by Parts 22 and 90 of the Commission's rules in conjunction with a proposal to convert from site-by-site licensing of paging channels to licensing on a geographic area basis. In the *First Report and Order (First R&O)*, adopted on April 23, 1996,² we adopted interim measures allowing incumbents on non-nationwide paging channels to apply for new sites to expand existing systems, subject to certain limitations, during the pendency of the rulemaking proceeding.³ On our own motion, we make certain modifications to the interim licensing rules established

Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems and Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, WT Docket No. 96-18, FCC 96-52, *Notice of Proposed Rulemaking*, ___ FCC Rcd ___ (released Feb. 9, 1996) (summarized in 61 Fed. Reg. 106199 (Feb. 16, 1996) (*Notice*)).

First Report and Order, WT Docket No. 98-18, FCC 96-183 (adopted April 22, 1996) (*First R&O*).

Issues raised in the comments pertaining to final paging rules will not be discussed in this *Reconsideration* order but will be deferred to the final order in this docket.

by the *First R&O*, as discussed below.⁴

2. Background. In the *First R&O*, we allowed incumbents to expand the geographic coverage of their systems by adding transmission sites to their systems within a defined distance of existing, operating sites.⁵ Specifically, the *First R&O* provided that applications could be filed for new sites provided that the applicant certifies that the proposed site is within 65 kilometers (40 miles) of an operating site licensed to the same applicant on the same channel prior to the *Notice* date, that is, February 8, 1996.⁶ Thus, under the terms of the *First R&O*, incumbents may not use sites licensed after February 8, 1996 as the basis for filing applications for additional expansion sites under the interim rules.⁷

3. At the time we adopted the *Notice*, the Wireless Telecommunications Bureau (Bureau) was engaged in reducing a significant backlog of pending paging applications, primarily in the 931 MHz band, many of which had been pending for a year or more. Since the *Notice* was adopted, the Bureau has significantly reduced the backlog by processing all non-mutually exclusive applications filed through September 30, 1995. In *ex parte* presentations and in comments filed with the Commission, incumbent paging operators have argued that the processing backlog delayed licensing of sites that otherwise would have been granted prior to February 8.⁸ Accordingly, these commenters contend that they should not be precluded from using these newly licensed sites as a basis for expansion.

4. Discussion. We agree that because of the time it has taken to process certain paging applications, we should allow incumbents to use some sites that were not licensed as of February 8, 1996 as a basis for expansion. Due to the large number of 931 MHz applications filed in the past few years, the Bureau has developed a computer software program to identify and process non-mutually exclusive applications. The Bureau began using the program to process backlogged applications in mid-1995. However, some applications for 931 MHz licenses that were filed as early as January 1995 were still pending on February 8, 1996. The Bureau recently completed its computer run of 931 MHz applications filed between January 1 and September 30, 1995. The results of the run identified about 2,500 applications that were not mutually exclusive and are to be granted, if

⁴ See 47 C.F.R. 1.108.

⁵ *First R&O* at ¶ 25.

⁶ *Id.* at ¶ 25.

⁷ *Id.*

⁸ See, e.g., Ameritech Comments at 3; PCIA Comments at 30; ProNet Comments at 14; Mercury Comments at 1.

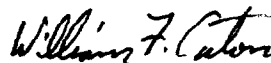
the applications are otherwise complete,⁹ eliminating most of the remaining application backlog. We believe that the recipients of these license grants should be allowed to expand their systems based on these sites, as long as the licensed sites are operational at the time the expansion applications are filed.¹⁰ Therefore, we will allow incumbents to expand 65 kilometers (40 miles) from sites for which applications were filed as of September 30, 1995, whether or not such applications were granted prior to February 8, 1996. This change to our interim measures will benefit applicants most affected by delays prior to adoption of the *Notice*.

5. Procedural Matters and Ordering Clauses. IT IS ORDERED that, pursuant to the authority of Sections 4(i), 303(r), 309(c), 309(j), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 309(c), 309(j), and 332, and effective upon publication of this *Reconsideration Order* in the Federal Register, the interim rules set forth in the *First Report and Order* in this docket ARE MODIFIED as set forth herein.¹¹

6. Regulatory Flexibility Act. The analysis pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. Section 603, is contained in Appendix A.

7. Further Information. For further information concerning this proceeding, contact Mika Savir or Rhonda Lien, Legal Branch, Commercial Wireless Division, Wireless Telecommunications Bureau at (202) 418-0620

FEDERAL COMMUNICATIONS COMMISSION


William F. Caton
Acting Secretary

⁹ See *Public Notice*, FCC Completes Processing of 931 MHz Paging Applications Based on First Software Run, Announces Results of Second Run, DA 96-776 (May 16, 1996).

¹⁰ See *First R&O* at ¶ 25.

¹¹ This partial lifting of the paging application freeze relieves a restriction and is not subject to the 30 days' notice requirement of the Administrative Procedure Act. See 5 U.S.C. § 553(d)(1). Moreover, the Commission finds good cause to make these rules effective on less than 30 days' notice to allow paging operators to incrementally add transmission sites to better provide service to customers, upgrade to spectrum efficient technology, and compete more efficiently against nationwide carriers. See 5 U.S.C. § 553(d)(3).

APPENDIX A

FINAL REGULATORY FLEXIBILITY ANALYSIS

For the *Reconsideration Order* of the *First Report and Order*

As required by Section 604 of the Regulatory Flexibility Act, the Commission has prepared a Final Regulatory Flexibility Analysis of the expected impact on small entities of the modification of the interim rules set forth in this *Reconsideration Order*.

Statement of the Need for and Objectives of Interim Rules: In this *Reconsideration Order*, the Commission is modifying the interim measures, specifically, the interim freeze on new paging applications imposed in the *Notice of Proposed Rulemaking*, to permit incumbent paging licensees to apply for additional licenses to add transmission sites to existing paging systems on the same channel as the existing systems, provided that the additional transmission site is within 65 kilometers (40 miles) from an operating transmission site in the applicant's system. This modification of the interim rule will allow paging companies additional flexibility to expand their systems during the interim period.

Summary of Significant Issues Raised by Comments to the Initial Regulatory Flexibility Analysis (IRFA): There were no comments to the IRFA regarding the interim rules.

All significant alternatives are discussed in the *Reconsideration Order*.